

**AN ORDINANCE TO AUTHORIZE A SERVICE AGREEMENT
WITH NIXLE, LLC, FOR AN INTERNET-BASED PUBLIC
EMERGENCY COMMUNICATIONS SYSTEM.**

#3891

Sponsor:

Council
Member
M. Brown

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by Ordinance; and

WHEREAS, the City desires to obtain a new internet-based public emergency communications system to replace its former "reverse 911" emergency notification system; and

WHEREAS, after surveying the market, the City has negotiated a service agreement, subject to the approval of City Council, with Nixle, LLC, for its "Nixle 360" internet-based public emergency communications system ("the Nixle System"); and

WHEREAS, the Nixle System will not only provide enhanced reverse 911 services, but will also provide a text message (including photographs) tip line capability via cell phones. In addition, the Nixle System will provide access to the Federal Emergency Management Agency's ("FEMA's") Integrated Public Alert and Warning System ("IPAWS"), is integrated with Google.com, and can be linked to various social media as well; and

WHEREAS, the Service Agreement with Nixle, a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit "A," is for a term

of three years, at a cost of Sixteen Thousand Two Hundred Seventy Four Dollars and Ninety Two Cents (\$16,274.92) per year; and

WHEREAS, it is the recommendation of the Wilmington Police Department that the City enter into the Service Agreement with Nixle, LLC, as described herein.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Service Agreement between the City and Nixle, LLC, a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit "A," for the internet-based "Nixle 360" public emergency communications system for a term of three years, at a cost of Sixteen Thousand Two Hundred Seventy Four Dollars and Ninety Two Cents (\$16,274.92) per year, is hereby approved and the Mayor or his designee and the City Clerk are hereby authorized to execute as many copies of said Agreement, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

First Reading December 12, 2013
Second Reading. . . December 12, 2013
Third Reading . . . January 9, 2014

Passed by City Council, Jan. 9, 2014

President of City Council

ATTEST: Maribel Seijo
City Clerk

Approved as to form this
12th day of December, 2013

Mary Pilnick
First Assistant City Solicitor

Approved this 13th day of
January, 2014

Dennis P. Williams
Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into a service agreement with Nixle, LLC, for the internet-based "Nixle 360" public emergency communications system for a term of three years, at a cost of Sixteen Thousand Two Hundred Seventy Four Dollars and Ninety Two Cents (\$16,274.92) per year.

IMPACT STATEMENT

Agenda #3891

This Ordinance authorizes the City to enter into a service agreement with Nixle, LLC, for the internet-based "Nixle 360" public emergency communications system for a term of three years, at a cost of Sixteen Thousand Two Hundred Seventy Four Dollars and Ninety Two Cents (\$16,274.92) per year.



Nixle, LLC
Service Agreement

This Service Agreement ("Agreement") is entered into by and between Nixle, LLC ("Nixle"), and _____ ("Customer"), on _____, 20____ (the "Effective Date"). Nixle and Customer are each hereinafter sometimes referred to as a "Party" and collectively, the "Parties."

THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING THE USE OF NIXLE'S SERVICE:

1. SERVICE. Nixle shall provide Customer access to its proprietary interactive communication services (the "Service") subject to the terms and conditions set forth in this Agreement, the Additional Business Terms applicable to such Services in Exhibit A, and the description of Services and pricing attached hereto as Exhibit B (the "Quote"). If applicable, Nixle shall provide training and professional services in accordance with the Pricing (as defined below) set forth in the Quote. Nixle shall provide Customer with login and password information for each User (as defined below) and will configure the Service to contact the maximum number of persons or communication devices (each a "Contact") purchased by Customer as set forth in the Quote. Nixle may from time to time offer Customer new features, enhancements or services which, if accepted by Customer in writing, and subject to Customer's payment of any applicable additional fees, shall become part of the Services and subject to the provisions of this Agreement.

3. CUSTOMER RESPONSIBILITIES.

3.1 Users. Customer shall in its discretion authorize certain of its employees and contractors to access the Service ("User(s)"). Each User must be bound in writing to confidentiality obligations that are no less restrictive than those set forth herein, and that are sufficient to permit Customer to fully perform its obligations under this Agreement. Customer shall cause Users to undergo initial setup and training in accordance with the Quote. Customer shall be responsible for (i) ensuring that Users maintain the confidentiality of all User login and password information; (ii) ensuring that Users use the Service in accordance with all applicable laws and regulations, including those relating to use of personal information; (iii) any breach of the terms of this Agreement by any User; and (iv) all communications by Users using the Service. Customer shall immediately notify Nixle if it becomes aware of any User action or omission that would constitute a breach or violation of any term of this Agreement.

3.2 Customer Data. All electronic data Customer provides to Nixle in connection with the use of the Service ("Customer Data") shall be true, accurate, current and complete, and shall be in a form and format specified by Nixle. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. By purchasing the Service, Customer authorizes Nixle to collect, store and process Customer Data subject to the terms of this Agreement. Customer shall maintain a copy of all Customer Data it provides to Nixle. If Customer or any User provides any Customer Data that is untrue, inaccurate, outdated or incomplete, Customer acknowledges and agrees that any communications sent utilizing the Service may not reach the intended Contact. Customer shall prevent unauthorized access to, or use of, the Service, and shall notify Nixle promptly of any such unauthorized use. Nixle shall have no liability for any losses, damages, claims,

suits or other actions arising out of or in connection with the unauthorized or improper use of the Service on Customer's hardware or networks. Customer acknowledges that Nixle is not responsible for monitoring Customer or Users' use of the Service to examine the content passing through it, and Nixle shall have no liability for such content.

4. TERM. This Agreement will commence on the Effective Date and will continue in force for one (1) year, subject to automatic renewal for successive one-year terms (each a "Term Year" and collectively with the initial one (1) year, the "Term") unless terminated in writing not less than ninety (90) days prior to the expiration of the then current Term Year. Any use or accessing of the Service by Customer or a User after the effective date of termination shall, at the option of Nixle, constitute automatic renewal of this Agreement for an additional Term Year.

5. TERMINATION; SUSPENSION.

5.1 Termination by Either Party. Either Party may terminate this Agreement upon the other Party's material breach of this Agreement, provided that (i) the non-breaching Party sends written notice to the breaching Party describing the breach in reasonable detail; (ii) the breaching Party does not cure the breach within thirty (30) days following its receipt of such notice (the "Notice Period"); and (iii) following the expiration of the Notice Period, the non-breaching Party sends a second written notice to the breaching Party indicating its election to terminate this Agreement.

6. PROPRIETARY RIGHTS.

6.1 Grant of License. Nixle hereby grants to Customer, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Service subject to the terms and conditions of this Agreement. Upon suspension of the Service or termination of this Agreement for any reason, the foregoing license shall terminate automatically and Customer shall promptly discontinue all further use of the Service.

6.2 Restrictions. Customer shall use the Service solely for its internal business purposes and shall not make the Service available to, or use the Service for the benefit of, any third party except as expressly contemplated by this Agreement. Customer shall not: (i) copy, modify, reverse engineer, de-compile, disassemble or otherwise attempt to discover or replicate the computer source code and object code provided or used by Nixle in connection with delivery of the Service (the "Software") or create derivative works based on the Software, the Service or any portion thereof; (ii) merge any of the foregoing with any third party software or services; (iii) use any Nixle Confidential Information to create a product that competes with the Software; (iv) remove, obscure or alter any proprietary notices or labels on the Software or any portion of the Service; (v) create internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Customer's own intranets for its own internal business purposes; (vi) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service; or (vi) use the Service in violation of any applicable law or regulation.

6.3 Reservation of Rights. Other than as expressly set forth in this Agreement, Nixle grants to Customer no license or other rights in or

to the Service, the Software or any other proprietary technology, material or information made available to Customer through the Service or otherwise in connection with this Agreement (collectively, the "Nixle Technology"), and all such rights are hereby expressly reserved. Nixle (or its licensors where applicable) owns all rights, title and interest in and to the Service, the Software and any Nixle Technology, and all patent, copyright, trade secret and other intellectual property rights ("IP Rights") therein, as well as (i) all feedback and other information (except for the Customer Data) provided to Nixle by Users, Customer and Contacts, (ii) all transactional, performance and derivative data and metadata generated in connection with the Services, and (iii) any De-Identified Data (as defined below).

6.4 Customer Data. As between the Parties, Customer retains sole right, title and interest in the Customer Data. Without limiting the foregoing, Nixle shall be permitted to de-identify Customer Data and aggregate it, including with other customers' data (the "De-Identified Data"), for use in its legitimate marketing and research activities.

7. CONFIDENTIAL INFORMATION.

7.1 Definition; Protection. As used herein, "Confidential Information" means all information of a Party ("Disclosing Party") disclosed to the other Party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes without limitation, any personally identifiable Customer Data, all Nixle Technology, and either Party's business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose other than performance or enforcement of this Agreement without the Disclosing Party's prior written consent, unless (but only to the extent) otherwise required by a governmental authority. Each Party agrees to protect the Confidential Information of the other Party with the same level of care that it uses to protect its own confidential information, but in no event less than a reasonable level of care. Without limiting the foregoing, this Agreement and all terms hereof shall be Confidential Information of Nixle, and the Customer Data shall be Confidential Information of Customer.

8. WARRANTIES; DISCLAIMER.

8.1 Nixle Warranty. Nixle shall use commercially reasonable efforts to provide the Services herein contemplated. To the extent the Quote provides for any professional services, Nixle shall perform them in a professional manner consistent with industry standards. THE FOREGOING REPRESENT THE ONLY WARRANTIES MADE BY NIXLE HEREUNDER AND NIXLE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8.2 Disclaimer. THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. NEITHER NIXLE NOR ITS

LICENSORS WARRANT THAT THE SERVICE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL NIXLE HAVE ANY LIABILITY TO CUSTOMER, USERS, CONTACTS OR ANY THIRD PARTY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SERVICE TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF NIXLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

8.3 Customer Representations and Warranties. Customer represents and warrants that during use of the Service, Customer shall have (i) a privacy policy that clearly and conspicuously notifies Users of the way in which Customer Data shall be used, and (ii) primary safety and emergency response procedures including, without limitation, notifying 911 or equivalent fire, police, emergency medical and public health officials (collectively, "First Responders"). Customer acknowledges and agrees that Nixle is not a First Responder, and that the Service does not serve as a substitute for Customer's own emergency response plan, which in the event of an actual or potential threat to person or property, shall include contacting a First Responder. Customer represents and warrants that all communications utilizing the Service shall be sent by authorized Users, and that the collection, storage and processing of Customer Data, and the use of the Service, as provided in this Agreement, will at all times comply with (x) Customer's own policies regarding privacy and protection of personal information; and (y) all applicable laws and regulations, including those related to processing, storage, use, disclosure, security, protection and handling of Customer Data.

9. INDEMNIFICATION.

9.1 By Customer. Customer shall defend, indemnify and hold Nixle harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with any claims, suits or proceedings ("Claims") arising as a result of a breach of this Agreement.

9.2 By Nixle. Nixle shall defend, indemnify and hold Customer harmless from and against any Claim against Customer, but only to the extent it is based on a Claim that the Service directly infringes an issued patent or other IP Right in a country in which the Service is actually provided to Customer. If the Service is held to infringe and the use enjoined, Nixle shall have the option, at its own expense, to: (i) to procure for Customer the right to continue using the Service; (ii) replace same with a non-infringing service; (iii) modify such Service so that it becomes non-infringing; or (iv) refund any fees paid to Nixle and terminate this Agreement without further liability. Nixle shall have no liability for any Claim arising out of (w) Customer Data or other Customer supplied content, (x) use of the Service or Software in combination with other products, equipment, software or data not supplied by Nixle, (y) any use, reproduction, or distribution of any release of the Service or Software other than the most current release made available to Customer, or (z) any modification of the Service or Software by any person other than Nixle.

10. LIMITATION OF LIABILITY. In no event shall either Party have any liability to the other Party for any loss of use, interruption of business, lost profits, costs of substitute services, or for any other indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Notwithstanding anything in this Agreement to the contrary, in no event shall Nixle's aggregate liability, regardless of theory of liability, exceed amounts actually paid by Customer to Nixle hereunder during the 12-month period prior to the event giving rise to such liability.

11. PRICING. As consideration for the Service and subject to the

other terms of this Agreement, Customer shall pay the fees set forth in the Quote ("Pricing"). If Customer exceeds the usage as specified in the Quote, then Nixle reserves the right to annually review the usage and invoice Customer as necessary at the current rates and Customer shall pay within 30 days of invoice. Fees for professional services, if applicable, shall be set forth in a SOW. Notwithstanding anything to the contrary elsewhere in this Agreement, the Pricing shall be automatically increased by five percent (5%) for the first Renewal Term following the Initial Term and for each successive Renewal Term thereafter.

12. PROFESSIONAL SERVICES. Nixle may provide professional services to Customer from time to time. Such professional services shall, unless otherwise expressly therein set forth, be provided in accordance with, and subject to, the provisions hereof and any additional terms related thereto which are set forth in a Statement of Work ("SOW").

13. PAYMENT TERMS; TAXES.

13.1 Payment. Unless otherwise set forth in Exhibit A, Nixle shall invoice Customer in advance for the Initial Term and annually in advance for any Renewal Term. All payments, including, without limitation, fees for professional services, shall be made within thirty 30 days from the date of invoice. If any fee is not paid within thirty 30 days after it is due (in addition to any other rights and remedies that Nixle may have hereunder without limitation), Nixle reserves the right to charge interest at a rate of one and half one percent per month or the highest rate allowed by Applicable Law whichever is lower.

13.2 Taxes. Unless otherwise provided for in Exhibit A, or in a SOW, as the case may be, Nixle's Pricing and fees for professional services do not include any local state federal or foreign taxes, levies, or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on Nixle's income. If Nixle has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Nixle with a valid tax exemption certificate authorized by the appropriate taxing authority.

14. MISCELLANEOUS.

14.1 Non-Solicitation. As additional protection for Nixle's proprietary information, for so long as this Agreement remains in effect, and for one year thereafter, Customer agrees that it shall not, directly or indirectly, solicit, hire or attempt to solicit any employees of Nixle; provided, that a general solicitation to the public for employment is not prohibited under this section. In the event that Customer hires any such employee (whether as an employee or consultant or otherwise engages the services of such employee) in violation of this section, Customer shall pay to Nixle an amount equal to 100% of the total first-year compensation which Customer pays

such individual as a fee, salary, or other compensation.

14.2 Force Majeure; Limitations. Nixle shall not be responsible for performance under this Agreement to the extent precluded by circumstances beyond Nixle's reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, labor problems, computer, telecommunications, Internet service provider or hosting facility failures, or delays involving hardware, software or power systems, and network intrusions or denial of service attacks. The Service delivers information for supported Contact paths to public and private networks and carriers, but cannot guarantee delivery of the information to the recipients. Final delivery of information to recipients is dependent on and is the responsibility of the designated public and private networks or carriers.

14.3 Waiver; Severability. The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement shall in no way be considered to be a waiver of such provisions. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted and the remaining provisions shall continue in full force and effect.

14.4 Assignment. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned (including an assignment-by operation of law), or otherwise transferred, in whole or in part, by Customer, and any such attempted assignment shall be void and of no effect without the advance written consent of Nixle.

14.5 Governing Law; Attorney's Fees. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without regard to its conflicts of laws rules.

14.6 Marketing. Customer consents to Nixle referencing Customer's name and logo as a Nixle customer in Nixle publications, its website and in other marketing materials.

14.7 Survival. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and applicable provisions of Exhibit A shall survive the expiration or earlier termination of this Agreement.

14.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one original document. A facsimile transmission or copy of the original shall be as effective and enforceable as the original.

14.9 Export Compliant. Neither Party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date set forth below.

NIXLE, LLC

[CUSTOMER]: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address:

[CUSTOMER]'s address for legal notices:

594 Howard St, Suite 204

San Francisco, CA 94105

Attn: _____

[CUSTOMER]'s address for billing:

Attn: _____

Email for billing: _____

Telephone number: _____



594 Howard St, Suite 204, San Francisco, CA 94105 * call: 877.649.5362 * fax: 856.802.0245 * www.nixle.com

EXHIBIT A SERVICE LEVEL AGREEMENT

Section I – Availability

Nixle provides a high performance, scalable and reliable Software as a Service solution (the "Service"). The Service will have a monthly broadcast availability¹ of 99.99% or greater, allowing for real-time call prioritization which provides optimal service to customers at all subscribed service levels².

¹Broadcast Availability – is defined as the ability to access the Service in conjunction with the ability to send a notification to one or more contact paths per member.

²Subscribed Service Levels – Nixle uses a proprietary Intelligent Message Service Prioritization (IMSP) algorithm to ensure optimal delivery of emergency messages for all customers at all subscribed service levels.

Section II – Performance

Minimum Notification Attempts: For any given 60 minute period, Nixle will make a minimum number of notification attempts to the 1st contact path for customer broadcasts using the standard configuration (30 second call or 500 character message) per the table below:

Minimum number of notification attempts in 60 minutes

Notification Type	Notification Attempts
Voice	100,000
Text	100,000

Minimum number above does not apply when client uses the broadcast delivery throttling feature.

Section III – Maintenance

The Service utilizes a geographically redundant architecture to provide the highest levels of reliability while requiring the lowest number of maintenance activities per year compared with other notification solutions on the market. Scheduled maintenance is designed to be non service impacting. Nixle may periodically conduct routine maintenance or implement upgrades to the Service as needed to maintain availability and performance within our agreed upon SLA's.

Section IV – Support

Nixle has a dedicated team of experienced, patient, and capable support professionals to assist customers with answering questions about the services, customer usage, and to address specific issues. Nixle Support is available 24 hours a day, 7 days a week, 365 days a year.

Support should be contacted for all technical inquiries associated with the Nixle Solutions. The best method for submitting an inquiry is the Nixle Client Portal. To best serve our clients' needs, the following methods are available to obtain technical assistance. Urgent inquiries must be reported by phone or the Nixle Client Portal to ensure the quickest response.

- **Online Support: Client Portal**
Nixle's Client Portal provides you with convenient, secure access to a growing number of useful resources, including Know on the Go's, knowledgebase content, FAQs, case management, and other product support information. The Client Portal can be accessed at: <http://clientportal.Nixle.com>.
- **Email Support**
Email support is available at securedesk@Nixle.com. E-mails are responded to within one business day in the order received.
- **Phone Support**
Nixle Support can be reached via phone by dialing toll-free (888) 366-3969 in the US/Canada.

Nixle also provides an emergency hotline for assisting customers in sending notifications.

- **Live Operator Access**
Customers may access the Nixle Live Operator to send notifications 24 hours a day, 7 days a week, 365 days a year.



Building Safer Communities Together

NIXLE PRICING INFORMATION

Quote Valid for 60 Days

PREPARED FOR:	Wilmington PD	Quote Number:	305-212d
	800 N. French St.	Quote Date:	26-Sep-13
	Wilmington, DE 19801	Expiration Date:	25-Nov-13
	302-383-1482	Contract Period:	3 Year
	Attn: Cpl. Mark Ivey	Payment Terms:	Net 30
Nixle Contact Information:			Brian Yim
			877-649-5362 x305
			brian.yim@nixle.com

Setup and Implementation		
Product		Total Price
Nixle 360 Setup Fee		waived

Annual Subscription		
Product	Product Summary	Total Price
Nixle 360 Annual License	Unlimited Text, Email, Web Notifications; Unlimited Emergency Voice Messages; Multi-platform integration; Two-way communication; Anonymous Tipping; 25 mobile keywords, Private/Public Groups; Enhanced Geo-targeting; 24 hour phone support; Multi language support; IPAWS publication; NWS re-broadcast	\$16,274.92
Grand Total:		\$16,274.92

Name: _____ Title: _____

Signature: _____ Date: _____

Headquarters:
594 Howard St, #200

San Francisco, CA 94105
877-649-5362
www.Nixle.com